

FILED IN OPEN COURT  
ON 9-11-19 RL  
Peter A. Moore, Jr., Clerk  
US District Court  
Eastern District of NC

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
NORTHERN DIVISION

NO. 2:19-cr-12-1 FL

UNITED STATES OF AMERICA )

v. )

) MEMORANDUM OF PLEA  
) AGREEMENT

)  
)  
) CAPT. NEILL'S SEAFOOD, INC. )

The United States of America by and through the United States Attorney for the Eastern District of North Carolina ("USA-EDNC"), and the Environmental Crimes Section of the United States Department of Justice ("ECS") (collectively referred to herein as "the United States" or "the Government"), and the Defendant, with the concurrence of the Defendant's attorneys, Elliot Sol Abrams, Charles E. James, Jr., and Camden Webb, have agreed that the above-captioned case should be concluded in accordance with this Memorandum of Plea Agreement as follows:

1. This Memorandum constitutes the full and complete record of the Plea Agreement. There are no other agreements between the parties in addition to or different from the terms herein.

2. The Defendant agrees:

- a. To waive indictment and plead guilty to the one-count Criminal Information filed herein.
- b. To make restitution to any victim in whatever amount the Court may order, pursuant to 18 U.S.C. §§ 3663 and 3663A. Per the agreement of the parties, said restitution shall be, at a minimum, \$7.00 per one-pound cup of mislabeled jumbo crabmeat purchased by customers between 2012 and 2015. The Defendant acknowledges that an estimated total of 200,536 cups of mislabeled jumbo crabmeat was sold during that timeframe, resulting in restitution due and owing of \$1,403,752. The Defendant further acknowledges that at this time, the Government has identified the individual recipients (not including the retailers) of 185,023 of those sales (with a total restitution value of \$1,295,161). The Defendant acknowledges that under the Crime Victims' Rights Act, victims have the right

to appear and allocute at the plea hearing and sentencing hearing. The Defendant further recognizes that the victims may disagree with the proposed restitution figures recommended by the parties and that the proposed restitution is only a recommendation that is not binding upon the court. Said restitution shall be due and payable immediately. Said restitution shall be joint and several with the co-defendant, Phillip R. Carawan. All restitution ordered by the Court shall be due and payable in full immediately.

- c. To waive knowingly and expressly all rights, conferred by 18 U.S.C. § 3742, to appeal the conviction and whatever sentence is imposed on any ground, including any issues that relate to the establishment of the advisory Guideline range, reserving only the right to appeal from a sentence in excess of the applicable advisory Guideline range that is established at sentencing, and further to waive all rights to contest the conviction or sentence in any post-conviction proceeding, including one pursuant to 28 U.S.C. § 2255, excepting an appeal or motion based upon grounds of ineffective assistance of counsel or prosecutorial misconduct not known to the Defendant at the time of the Defendant's guilty plea. The foregoing appeal waiver does not constitute or trigger a waiver by the United States of any of its rights to appeal provided by law.
- d. To waive all rights, whether asserted directly or through a representative, to request or receive from the United States any records pertaining to the investigation or prosecution of this matter, except as provided in the Federal Rules of Criminal Procedure. This waiver includes, but is not limited to, rights conferred by the Freedom of Information Act and the Privacy Act of 1974.
- e. To assist the United States in the recovery and forfeiture of any assets which facilitated and/or were acquired through unlawful activities, including all such assets in which the defendant has any interest or control. Specifically, the Defendant agrees to voluntarily forfeit and relinquish to the United States the property specified in the Criminal Information. The Defendant further agrees to sign any documents necessary to effectuate the forfeiture and waives any further notice. In addition, the Defendant forfeits and otherwise waives any ownership right in all items seized during the investigation of the acts alleged in the Criminal Information. The Court has jurisdiction over the

disposition of such items and may order the investigative agency to dispose of the items in such manner as provided by the agency's regulations. The Defendant forfeits and abandons all right, title, and interest in any firearms seized during the investigation of any of the acts alleged in the Criminal Information. The Defendant further agrees that the Preliminary Order of Forfeiture shall be final as to the Defendant as of entry by the Court, as allowed by Fed. R. Crim. P. 32.2 (b)(4)(A).

- f. To pay a special assessment of \$400.00, pursuant to the provisions of 18 U.S.C. § 3013. The assessment shall be paid by the Defendant at sentencing. The Defendant or Defendant's counsel shall provide a check in payment of the said assessment directly to the Clerk, U.S. District Court/EDNC. If the assessment is not paid at sentencing, the Defendant agrees that the assessment is due in full immediately.
- g. To complete and submit a financial statement under oath to the Office of the USA-EDNC no later than two weeks after the entry of the guilty plea. The Defendant acknowledges that it submitted a financial affidavit to the government on July 17, 2018. Defendant agrees to promptly submit to the USA-EDNC, ECS, and the United States Probation Office ("USPO"), a revised financial affidavit should its financial condition change.
- h. Compliance with the Law: That it shall commit no further violations of federal, state, or local law, including those laws and regulations for which primary enforcement has been delegated to state authorities, and shall conduct its operations in accordance with the Lacey Act and environmental laws of the United States. If the Defendant learns of any such violations committed by its agents or employees during the term of probation, the Defendant shall promptly notify the United States of the violations.
- i. Criminal Fine: The Defendant agrees to recommend, and to pay, a criminal fine of \$500,000. The Defendant shall pay said fine to the Clerk, U.S. District Court/EDNC, who shall ensure that the money is directed to the Magnuson-Stevens Conservation and Management Act Fund, pursuant to 16 U.S.C. § 1861(e).
- j. Ability to Pay: Notwithstanding the foregoing, the Defendant reserves the right to demonstrate inability to pay a fine in addition to restitution if and only if the Court determines that restitution due and owed to victims exceeds \$1,500,000. If the

total monetary penalty (restitution and fine) does not exceed \$2,000,000, the Defendant agrees and acknowledges that it has the ability to pay. The Defendant further agrees to execute any agreements necessary to ensure payment and collection of any ordered restitution and fine.

- k. Compliance Plan: Within 60 days of entry of the Plea Agreement, the Defendant shall develop and begin implementation of a Compliance Program, consistent with sentencing policies set forth in USSG § 8D1.4, by which the Defendant will inform and educate its employees and agents regarding the false records provisions of the Lacey Act, Title 16, United States Code, Sections 3372(d) and 3373, the Food Drug and Cosmetics Act, Title 21, United States Code, Section 343(a)(1), and the Tariff Act, Title 19 United States Code, Section 1304, and the federal regulation set forth at 19 Code of Federal Regulations, Section 134, as they relate to the Defendant's business activities. The Compliance Program shall also include a quality control system to ensure the proper labeling of all products and a system of random sampling.
- i. The Compliance Program must be reviewed and approved by the Government prior to any sentencing hearing, but is subject to final approval by the Court and the USPO.
  - ii. The Compliance Program must extend to and include employees and agents of Capt. Charlie's Seafood, Inc., a separate but related company.
  - iii. As part of any Compliance Plan, the Defendant shall designate a Compliance Officer who will prepare quarterly compliance reports to be submitted to the United States Probation Officer and the Government. The United States Probation Officer shall approve the selection of the Compliance Officer within 70 days of the entry of the Plea Agreement.
  - iv. The Compliance Officer shall be vested with the authority to recommend and make changes to the business culture and practices to ensure compliance with federal, state, and local laws. The Compliance Officer will include all recommendations in its quarterly report to the United States Probation Officer. The company agrees to implement all reasonable recommendations by the Compliance Officer during the term of probation.

- v. The implementation of the Compliance Plan shall constitute a special condition of the Defendant's probation.
- l. Term of Probation: The Defendant, along with the United States, will ask that the Defendant be placed on organizational probation for a period of five years from the date of sentencing pursuant to 18 U.S.C. § 3561(c)(1) and USSG §§ 8D1.1 and 8D1.2. At the expiration of the third year of probation, the Defendant may request the early termination of probation, provided that the Defendant demonstrates, and the National Oceanic and Atmospheric Administration ("NOAA") Office of Law Enforcement and the Food and Drug Administration concur, that:
- i. The Defendant and Capt. Charlie's Seafood, Inc., a separate but related company, have developed and fully implemented the Compliance Program;
  - ii. The Defendant has fully satisfied all other terms of the Plea Agreement, including payment of the criminal fine, and any sentence imposed by the Court; and
  - iii. No other violations have occurred at either company.
- m. The Defendant understands that this Plea Agreement does not provide or promise any waiver of any civil or administrative or other claims or actions by any party other than the USA-EDNC and ECS.
- n. Debarment: The Defendant agrees not to contest debarment, if such proceedings are initiated. At a minimum, however, the Defendant agrees to a voluntary debarment from any federal contracts during the term of probation. Such agreement will be a special condition of probation.
- o. Guaranty: The Defendant further agrees and acknowledges that the Defendant's sister corporation, Capt. Charlie's Seafood, Inc.; any parent of Defendant, subsidiary of Defendant, or other business entity that controls or is controlled by Defendant; the individual defendant, Phillip R. Carawan; the individual defendant's daughter, Tara Foreman, in her present and future capacity as an employee, manager, officer, and/or owner/operator of Capt. Charlie's Seafood, Inc.; and any future company owned

or operated by the individual defendant, or in which the individual defendant has any managerial role whatsoever, shall guarantee all monetary penalties (e.g., criminal fine, restitution, special assessment, etc.) imposed upon the Defendant by the Court in this case, as more fully set forth in the Guaranty Agreement, a copy of which is attached hereto as Exhibit B (without attachments) and fully incorporated herein by reference. The Defendant further agrees and acknowledge that Defendant shall consent to the jurisdiction of, and venue in, the United States District Court for the Eastern District of North Carolina for the purpose of enforcing the Guaranty Agreement.

- p. Agreed Upon Order of Payment: The Defendant further agrees to execute the Agreed Upon Order of Payment, a copy of which is attached hereto at Exhibit C, designed to ensure the payment of restitution due and owing.
- q. Public Apology: Within 48 hours of the entry of the guilty plea, and consistent with USSG §8D1.4(a), the Defendant shall place a full-page public apology in at least two major North Carolina newspapers (one in Raleigh). The Defendant will provide a draft of the public apology to the United States two weeks prior to any Rule 11 hearing. The United States must concur in the language proposed by the Defendant.
- r. Crime Victims' Rights Act: The Defendant understands that the United States must fully comply with all obligations under 18 U.S.C. § 3771, including victim notification and restitution provisions. The Defendant agrees to consent to any reasonable continuances of the sentencing hearing in order to ensure compliance with the Act.

3. The Defendant represents and/or acknowledges:

- a. That the Defendant has had the assistance of an attorney in connection with the charge against it. That the attorney has carefully reviewed this Plea Agreement with those persons designated by law and its bylaws to act on behalf of the Defendant (herein referred to as "Designated Representative") and that this Plea Agreement and the Joint Factual Statement has been signed by a person authorized by law and the bylaws of the Defendant to execute agreements on behalf of the Defendant.

- b. That it has filed with the Court prior to entry of this Agreement the original resolution from the board of directors (or equivalent written authorization as recognized by law) that gives the authority described in Paragraph 3(a) above to the Designated Representative and that authorizes such representative to execute this Agreement and the Joint Factual Statement on behalf of the Defendant, to enter the guilty plea on behalf of the company, and to accept the imposition of the court's sentence and judgment. A copy of the Resolution, attached hereto as Exhibit A, also provides as follows:
  - i. The Defendant is a legally viable entity, authorized to plead guilty to the charge set forth in the Criminal Information;
  - ii. the Defendant has the ability to pay a fine in accordance with Paragraph 2(j); and
  - iii. the Defendant agrees to be bound by all the specific terms of this Agreement.
- c. That its Designated Representative has reviewed and discussed the Criminal Information, the Joint Factual Statement, the Plea Agreement, the Consent Judgment and the Agreed Upon Order of Payment in this matter with the Defendant's attorney and that the attorney has explained the Government's evidence to that Designated Representative.
- d. That as a corporation, the Defendant is liable for the criminal acts of its employees acting within the scope of their employment for the benefit of the corporation.
- e. That it understands that this Agreement does not provide or promise any waiver of any civil or administrative actions, sanctions, or penalties that may apply, including but not limited to: fines; penalties; claims for damages to natural resources; suspension, debarment, listing to restrict rights and opportunities of the Defendant to contract with or receive assistance, loans, and benefits from United States agencies; licensing; injunctive relief; or remedial action to comply with any applicable regulatory requirement. The Defendant understands that this Agreement has no effect on any proceedings against any party not expressly mentioned herein, including the actual or potential criminal liability of any individuals.

- f. That it has sought and obtained a guarantee of its obligations under this Agreement from its sister company, Capt. Charlie's Seafood, Inc., the individual defendant, Phillip R. Carawan, and Tara Foreman in her capacity as an employee, officer, owner or operator of Capt. Charlie's Seafood, a copy of which is attached hereto as Exhibit B and incorporated herein by reference, and that Capt. Charlie's Seafood, Inc., and Tara Foreman further consent to the jurisdiction of, and venue in, the United States District Court for the Eastern District of North Carolina for the purpose of enforcing the Guaranty Agreement.
- g. That it has sought and obtained consent to the Agreed Upon Order of Payment from the individual defendant, Phillip R. R. Carawan, and Tara Foreman in her capacity as an employee, officer, owner or operator of Capt. Charlie's Seafood, a copy of which is attached hereto as Exhibit C and incorporated herein by reference, and that Tara Foreman further consents to the jurisdiction of, and venue in, the United States District Court for the Eastern District of North Carolina for the purpose of enforcing the Agreed Upon Order of Payment.

4. The Defendant understands, agrees, and admits:

- a. That as to the one count in the Criminal Information to which the Defendant is pleading guilty, the charge, code section, elements, and applicable penalties are as follows:

Count One

- (1) Charge: Lacey Act false labeling and aiding and abetting
- (2) Code section violated: 16 U.S.C. §§ 3372(d)(1) and (2), and 3373(d)(3)(A)(i) and (ii); and 18 U.S.C. § 2
- (3) Elements: On or about and between January 1, 2012, and June 15, 2015

First: The Defendant, by and through its employees acting within the scope of their duties and aiding and abetting each other, knowingly made or submitted, and caused to be made or submitted, a false record, account, label for, or identification of any fish or wildlife, as set forth in the Criminal Information; and



Second: the fish or wildlife had been or was intended to be imported, exported, transported, sold, purchased or received from any foreign country.

- (4) Maximum term of probation for a corporation: 5 years pursuant to USSG §8D1.2(a)(2).
  - (5) Minimum term of probation for a corporation: 1 year pursuant to USSG §8D1.2(a)(2).
  - (6) Maximum fine: the greater of \$ 500,000.00 or twice the gross gain pursuant to 18 U.S.C. §§ 3571(c) and (d), which is \$8,165,682.00
  - (7) Restitution pursuant to 18 U.S.C. §§ 3663 and 3663A, and as agreed to in Paragraph 2.b. above.
  - (8) Special assessment: \$400
- b. That the Court will take into account the advisory United States Sentencing Guidelines, together with the other sentencing goals set forth in Title 18, United States Code, Section 3553 (a). Defendant understands and acknowledges that the United States Sentencing Guidelines, including Chapter Eight that provides guidance for the sentencing of corporate Defendants, may be considered by the Court, except that pursuant to USSG §§ 8C2 .1 and 8C2 .10, the United States Sentencing Guidelines are not applicable for purposes of determining a fine. Instead, the fine is to be determined under 18 U.S.C. §§ 3553 and 3571.
- c. That the sentence has not yet been determined by the Court, that any estimate of the sentence received from any source is not a promise, and that even if a sentence up to the statutory maximum is imposed, the Defendant may not withdraw the plea of guilty.
- d. That, unless Defendant is found unable to pay, the Court will impose a fine, and failure to pay it will subject Defendant to additional criminal and civil penalties pursuant to 18 U.S.C. §§ 3611-14.
- e. Defendant understands that, upon sentencing, the USAO-EDNC will report this conviction to the Department of Justice Bureau of

Justice Assistance pursuant to 10 U.S.C. § 2408 for inclusion in the Defense Procurement Fraud Debarment Clearinghouse database and the System for Award Management of the General Services Administration. Defendant understands that for qualifying offenses, 10 U.S.C. § 2408 provides for a mandatory term of debarment of at least five years, which term may only be waived if the Secretary of Defense determines a waiver is in the interests of national security. Defendant understands that it also may be subject to administrative action by other federal or state agencies, based upon the conviction resulting from the Plea Agreement and upon grounds other than 10 U.S.C. § 2408, and that this Plea Agreement in no way controls whatever action, if any, other agencies may take. Defendant nevertheless affirms that it wants to plead guilty regardless of the debarment or administrative action consequences of his plea. Therefore, the Defendant waives any and all challenges to its guilty plea and to its sentence based on the debarment or administrative action consequences of its plea, and agrees not to seek to withdraw its guilty plea, or to file a direct appeal or any kind of collateral attack challenging its guilty plea, conviction, or sentence based on such consequences of its guilty plea.

5. The United States agrees:
  - a. That it reserves the right to make a sentence recommendation.
  - b. That it reserves the right at sentencing to present any evidence and information pursuant to 18 U.S.C. § 3661, to offer argument or rebuttal, to recommend imposition of restitution, and to respond to any motions or objections filed by the Defendant.
  - c. That, pursuant to Fed. R. Crim. P. 11(c)(1)(A), the United States will not further prosecute the Defendant for conduct constituting the basis for the Criminal Information; however, this obligation is limited solely to the USA-EDNC and ECS, and does not bind any other state or federal prosecuting entities.
  - d. Subject to the reservations above, the United States agrees to recommend:
    - i. a criminal fine in the amount of \$500,000, payable to the Magnuson-Stevens Conservation and Management Act Fund, pursuant to 16 U.S.C. § 1861(e);

- ii. five years of probation, with the possibility of early termination after the third year;
  - iii. a special condition of probation requiring the Defendant and Capt. Charlie's Seafood, Inc., a separate but related company, to develop and implement a Compliance Program consistent with sentencing policies set forth in USSG § 8D1.4, by which the Defendant will inform and educate its employees and agents regarding the false records provisions of the Lacey Act, Title 16, United States Code, Sections 3372(d) and 3373, the Food Drug and Cosmetics Act, Title 21, United States Code, Section 343(a)(1), and the Tariff Act, Title 19 United States Code, Section 1304, and the federal regulation set forth at 19 Code of Federal Regulations, Section 134, as they relate to the Defendant's business activities; and
- e. At the expiration of the third year of probation, the United States agrees in good faith to consider any application by the Defendant for early termination of probation, provided that the Defendant demonstrates that:
- i. the Defendant and Capt. Charlie's Seafood, Inc., a separate but related company, have fully implemented the Compliance Program;
  - ii. the Defendant has fully satisfied all other terms of the Plea Agreement and any sentence imposed by the Court; and
  - iii. no other violations at either company have occurred.
- f. That the USA-EDNC will not prosecute Tara Foreman for conduct constituting the basis of the Criminal Information; however, this obligation is limited solely to the USA-EDNC and ECS, and does not bind any other state or federal prosecuting entities. This provision is expressly conditioned on the Defendant's compliance with all of the terms of this Plea Agreement. If the Defendant fails to execute this Plea Agreement and/or fails to enter a guilty plea, or thereafter seeks relief from the guilty plea, or otherwise fails to comply with all of the terms of this Plea Agreement, the Government is no longer bound by this provision of this Plea Agreement and may, at its election, pursue all readily provable offenses against Tara Foreman.

- g. Except as otherwise provided and as reserved in the Agreed Upon Order of Payment, the government will not pursue any readily provable offenses against Tara Foreman based on Defendant's failure to pay the agreed upon criminal fine of \$500,000.

6. The parties agree, pursuant to Fed. R. Crim. P. 11(c)(1)(B), to the following positions as to the below-listed sentencing factors only, which are not binding on the Court in its application of the advisory Guideline range; provided that if Defendant's conduct prior to sentencing changes the circumstances with respect to any such factors, the United States is no longer bound to its positions as to those factors:

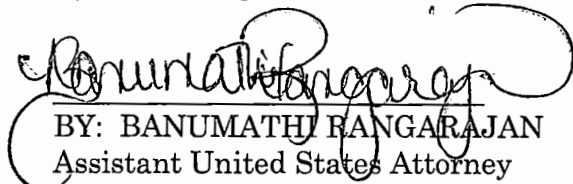
- a. During the relevant timeframe, the total retail market value of the mislabeled jumbo lump crabmeat was at least \$4,082,841.00.

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b. The company has accepted responsibility for its conduct.

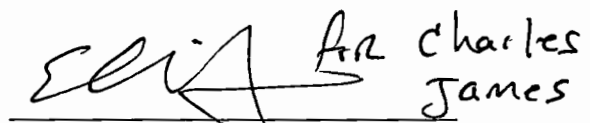
This the 21<sup>st</sup> day of June, 2019.

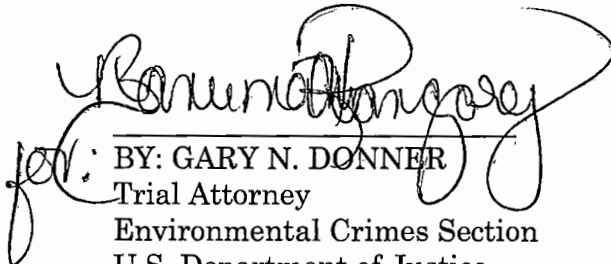
G. NORMAN AKCER, III  
Attorney for the United States  
Acting Under Authority Conferred  
By 28 U.S.C. § 515


  
BY: BANUMATHI RANGARAJAN  
Assistant United States Attorney  
Criminal Division  
U.S. Attorney's Office – EDNC

CAPT. NEILL'S SEAFOOD, INC.  
Defendant


  
BY: PHILLIP R. CARAWAN  
President,  
Capt. Neill's Seafood, Inc. &  
Designated Representative

  
CHARLES E. JAMES, Jr.  
Attorney for the Defendant

  
for: BY: GARY N. DONNER  
Trial Attorney  
Environmental Crimes Section  
U.S. Department of Justice

  
ELLIOT SOL ABRAMS  
Attorney for the Defendant

CONDITIONALLY  
APPROVED, this 11 day of Sept, 2019.

  
MAGISTRATE  
UNITED STATES DISTRICT JUDGE